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May 10, 1996

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, DC 20554

**Re: CC Docket No. 92-297 -- Policies and Rules to Implement Local  
Multipoint Distribution Service**

Dear Chairman Hundt:

The Attorneys General of Pennsylvania, Minnesota and Wisconsin strongly believe that the Federal Communications Commission can take a significant step in promoting a procompetitive telecommunications industry, as contemplated by the Telecommunications Act of 1996, by promulgating bidding and eligibility rules for Local Multipoint Distribution Service ("LMDS") spectrum that will ensure that this new broadband cellular service will provide effective competition to the incumbent monopoly Local Exchange Carriers ("LECs") and cable television Multiple System Operators ("MSOs"). This ex parte letter is submitted in accordance with section 1.1206(a)(1) of the Commission Rules.

As you may know, state Attorneys General represent a significant force in preserving and protecting competition through enforcement of state and federal antitrust laws. The concerns expressed in this letter arise in part from our experience in enforcing the antitrust laws in the telecommunications area.

For example, on June 9, 1993, 40 states, including Pennsylvania, Minnesota and Wisconsin, filed antitrust complaints and settlement agreements in federal court in New York to resolve their claims against seven of the nation's largest cable MSOs and Primestar Partners, L.P., a joint venture of the defendant MSOs and GE Americom Communications, Inc., a subsidiary of the General Electric Company. In the Primestar case, the Attorneys General blocked the cable operators from stifling high power Direct Broadcast Satellite Service ("DBS"), a new, potentially competitive service. It would enable consumers to receive multichannel subscription television programming by using a home satellite dish measuring no more than 18 inches in diameter in contrast to the 10 to 20 foot satellite dishes that were then in common use. High-powered DBS,

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therefore, posed a serious challenge to the defendant MSOs' local monopolies since a single DBS operator would be capable of reaching all consumers and competing directly with every cable operator.

The complaints, culminating a five-year investigation into anticompetitive practices in the cable television industry, charged the defendant MSOs with stifling competition from their non-cable competitors, such as satellite TV operators, by denying or restricting their competitors' access to multichannel subscription television programming. The complaints further alleged that in order to suppress the developing DBS technology, the defendants formed the Primestar Partners joint venture for the purpose of acquiring control of the only DBS satellite then available, preempting its use by a non-cable competitor, and agreeing to offer programming that would not compete with programming already offered by the defendant cable MSOs. The joint venture agreement also granted each MSO partner the exclusive right to distribute the DBS service in its cable franchise area, eliminating competition between the joint venturers as sellers of the DBS service.

Our experience with DBS has made us sensitive to situations in which incumbent monopolists have an incentive to stifle competition. LMDS is a new technology that has the capacity to compete directly with existing telephone and broadcast video services offered by the LECs and cable MSOs, respectively. We are concerned, however, that this new technology may be suppressed by the incumbent local telephone and cable monopolists, unless specific safeguards are created by the Commission in its rulemaking to prevent the type of abuses we found to exist in the Primestar case.

In reviewing the procompetitive and deregulatory mandates of the Act, it is clear that Congress intended for the Commission to develop rules and regulations for local exchange competition that would promote and facilitate local competitive entry. In developing this mandate, Congress also manifested its intent that the local telephone monopolies should not be able to enter in-region, interLATA exchange markets until there was real facilities-based local exchange competition. As a wireless, broadband competitive alternative to both local telephone and video services, LMDS offers an excellent way to promote this facilities-based local exchange competition. Therefore, it is critical that the Commission develop rules that will preclude the local telephone and cable monopolists from bidding for new LMDS franchises in their regions until there is real competition in their respective local service markets. State Attorneys General have seen many merger and buy-out cases where a monopolist is all too willing to pay or bid premium prices for the last remaining competitor to assure itself of future monopoly profits.

In conclusion, with or without this new LMDS technology, there is no doubt that the LECs and cable MSOs have the capability and resources to offer telephone and video services in both new and existing markets they already serve. Without the safeguards suggested, however, it is equally clear that an excellent available alternative to offering a facilities-based direct

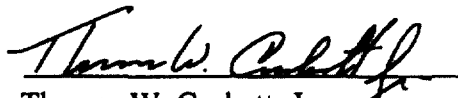
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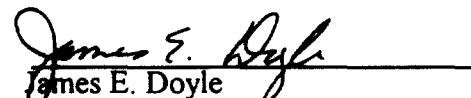
competitor to the existing local telephone and cable monopolists in the immediate future will, in all likelihood, be lost.

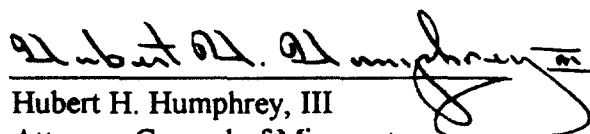
Pursuant to section 1.1206 of the Commission's Rules, two copies of this letter have been delivered to the Commission's Secretary for filing in this proceeding.

Thank you for your consideration.

Sincerely,

  
Thomas W. Corbett, Jr.  
Attorney General of Pennsylvania

  
James E. Doyle  
Attorney General of Wisconsin

  
Hubert H. Humphrey, III  
Attorney General of Minnesota

TWCJr/CSH/dmh/hundt.Ltr

cc: Hon. James H. Quello  
Hon. Rachelle B. Chong  
Hon. Susan Ness  
Michelle Farquhar, Chief Wireless Telecommunications Bureau  
William E. Kennard, General Counsel  
James Olson, Chief Competition Division, OGC